

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**RENEE MARTINEZ,**

**Plaintiff,**

**v.**

**CIV 11-0553 JCH/KBM**

**DEPARTMENT OF PUBLIC SAFETY,  
NEW MEXICO STATE POLICE and  
OFFICER NOE ALVARADO, in his  
individual and official capacity,**

**Defendants.**

**ORDER GRANTING MOTION TO EXCLUDE EXPERT WITNESS**

THIS MATTER comes before the Court on Defendants' Motion to Exclude Expert Witness (*Doc. 55*), filed May 24, 2012. The motion indicates that Defendants sought concurrence by e-mail, but "Plaintiff's counsel responded: 'if you would like additional time to name an expert, I won't object. But I have to object to striking my expert witness.'" *Id.* at 4. However, Plaintiff has failed to file any response in opposition to the motion. *See Doc. 60*. Pursuant to our District's Local Rules, "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ. 7.1(b).

The facts set forth in the motion justify the relief sought. Plaintiff's deadline for disclosing experts ran on December 31, 2011. Plaintiff sought no extension of this deadline. It was not until May 18, 2012 that Plaintiff disclosed Kevin Clements as a witness to be called as an expert. *See Doc. 54*. However, Mr Clements failed to submit any expert report, much less

one in compliance the requirements under Rule 26. *See* FED. R. CIV. P. 26(a)(2) (including a complete statement of all opinions, facts or data considered in forming the opinions, exhibits, witness' qualifications and publications, cases in the past four years where expert gave expert testimony, and compensation to be paid to the expert).

Therefore, Defendants correctly argue that the Plaintiff's expert disclosure is neither timely or complete. The only appropriate remedy at this juncture for such grievous disregard for the rules of procedure and orders of this Court is excluding the expert's testimony.

Wherefore,

**IT IS ORDERED** that Defendants' Motion to Exclude Kevin Clements as an expert witness for Plaintiff (*Doc. 55*) is **granted**.

  
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**UNITED STATES CHIEF MAGISTRATE JUDGE**